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C O N F I D E N T I A L SECTION 01 OF 03 BEIRUT 002901

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E.O. 12958: DECL: 09/07/2016

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SUBJECT: LEBANON: NICHOLAS MICHEL IN LEBANON; NEEDS TIME
FOR TRIBUNAL AGREEMENT

REF: STATE 140003

Classified By: Jeffrey D. Feltman, Ambassador. Reason 1.4 (b) and (d)

SUMMARY

¶1. (C) During a 9/7 meeting with the Ambassador and poloff at the Phoenicia Hotel, UN Legal Adviser Nicholas Michel provided an overview of his discussions with the Lebanese regarding the draft "Statute of the Special Tribunal for Lebanon." On sequencing, Michel said that PM Siniora should wait for the UN Security Council to approve the statute before moving ahead on Lebanese Cabinet and Parliamentary approval. Michel noted that a UN Security Council resolution establishing the tribunal is not a requirement. On substance issues, Michel explained that the current draft grants the tribunal scope over the Hariri assassination and "related acts of a similar nature and gravity" between October 1, 2004 and Dec 31, 2005. He added that Article 3 of the agreement gives the tribunal jurisdiction to try people for "crimes against humanity," and that a main reason this was put in the agreement is to avoid appending a separate and explicit provision against immunities, which is potentially counter to the Lebanese constitution. Michel implied there is a disconnect within the GOL since PM Siniora had not been aware of many of the details on timing, whereas the GOL's legal team had been. Michel was accompanied by UN OLA's Mark Quarterman and UN Special Representative for Lebanon Geir Pedersen. END SUMMARY.

OTHER MEETINGS

¶2. (C) Michel had already met with other members of the P5 as well as separately with PM Siniora and Justice Minister Charles Rizk (accompanied by the GOL legal team). Following our meeting, Michel planned to meet with former Justice Minister -- and Hariri family confidante -- Bahij Tabbareh, who has been deeply involved in negotiating the draft statute. Critically, Nabih Berri refused to meet with Michel during his short visit to Beirut, a sign that Berri may try to block GOL passage of the draft statute.

REALISTIC TIMETABLE FOR TRIBUNAL APPROVAL

¶3. (C) Michel said he sensed a disconnect between Siniora

and Rezk as far as the necessary sequencing for approving the statute. Siniora had intended to present the draft immediately -- "within two or three days" -- to the Council of Ministers to approve and forward to the Chamber of Deputies (Parliament), which Michel said is not advisable since the statute still needs to go through a rigorous UNSC vetting process from which it might emerge much altered. Michel recommended Siniora wait until then to seek GOL approval. However, Rizk and the GOL legal team were already well aware of the necessary steps still to be taken, and Michel and Pedersen wondered why they had not informed the Prime Minister of this. "The Prime Minister does not appear to have thought critically," noted Pedersen.

14. (C) As far as next steps, Michel leaves Beirut with the latest draft which UNSYG Annan will present in a report to the Security Council. Michel noted that there are already several Lebanon-related reports -- the UNSCR 1701 report next week, the Brammertz report in late September, the UNSCR 1559 report in late October -- filling the schedule, so he proposes Annan forward his report on the tribunal, including the statute, to the UNSC sometime during the first two weeks of October. The Council would then deliberate and return comments on the draft, though Michel hopes these will already have been worked out in consultations beforehand to hurry along the process. Then comes the complicated GOL approval process. Michel estimated the whole process might take two to three months. Notably, Michel said that a further authorizing UNSC resolution under Chapter VII -- while desirable -- would not be required in order to sign the statute and establish the tribunal (he mentioned that the Sierra Leone tribunal did not have an establishing resolution).

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TRIBUNAL JURISDICTIONAL ISSUES

15. (C) On substance, the key issues of concern are the same: the tribunal's scope to try other cases and the jurisdiction to charge suspects with crimes against humanity. Regarding scope, Michel said that his GOL interlocutors have agreed to keep the current language in the statute allowing the tribunal jurisdiction over suspects in the Hariri assassination "as well as for other related acts of a similar nature and gravity which occurred in Lebanon between 01 October 2004 and 31 December 2005." (Note. Michel let us glance at the most recent draft, which shows this is no longer bracketed language. End Note.) The Ambassador said that the USG position is that the "nature and gravity" language gives the tribunal too broad a jurisdiction, while bookending it with the two dates is too limiting since, as we saw with the Shehadeh assassination attempt this week, there is still a threat against Lebanon. Michel assured us that the use of the term "related acts" means the tribunal will encompass only crimes that are clearly materially related to the Hariri assassination.

16. (C) Regarding the timeframe, Michel said that the UN wants to exercise some form of control over the scope of time, since there is a perception that the tribunals on Sierra Leone, Rwanda, and the former Yugoslavia have "gone out of control". However, Michel added that if there were another "series of attacks" in Lebanon, then "minds might change." He noted that Hizballah is reportedly "adamantly" against broadening the tribunal's jurisdiction beyond just the Hariri assassination.

17. (C) Michel raised Articles 2 and 3 of the draft statute. Article 2 gives the tribunal jurisdiction to try people for terrorism according to Lebanese law and, notably, the 1998 Arab Convention on the Suppression of Terrorism (providing wider Arab cover), while Article 3 allows for suspects to be tried for crimes against humanity. The Ambassador raised reftel points, but Michel countered that it makes sense from

a legal and political perspective to include this Article 3. He noted that tribunal judges will not be able to try suspects solely for crimes against humanity, but will have to include a terrorism charge as well (though suspects can be charged solely for terrorism if there is insufficient evidence to support a crimes against humanity charge).

¶18. (C) Furthermore, implicit in the crimes against humanity international legal understanding is a "clear provision against immunities," which might otherwise have to be explicitly spelled out in an annex (such as the Sierra Leone tribunal statute contains). The GOL legal team had noted to Michel in their earlier meeting that this might be counter to Lebanon's Constitution, allowing suspects to potentially submit complaints to the Constitutional Council. This would also give political ammunition to those in Lebanon opposed to the tribunal. Michel said he will keep the language as it is and see if it can gain consensus in New York, though Justice Minister Rizk warned him that any seeming reluctance within the UNSC will only increase the difficulty of ultimately gaining GOL approval for Article 3.

COMMENT

¶19. (C) Though Michel's chronology of the steps needed to approve and establish the tribunal will dash the hopes of those -- including Siniora -- who wanted a rapid adoption of the agreement, there is a silver lining in that the issue will continue to be headline fodder in Lebanon at various points (Michel's return to New York, the Secretary General's presentation to the UNSC, etc.), presumably having a dissuasive effect on would-be attackers. Further, while we would prefer the attacks' timeframe in the statute be left open-ended and not restricted to 15 months, as an added deterrent we should make known the possibility that the tribunal might extend to include a further series of attacks (if the Shehadeh attempt proves to be the start of a new bombing campaign).

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¶10. (C) Berri's refusal to meet with Micel, ostensibly because of his parliamentary sit-in, is a concern. Berri could be using the tribunal issue to gain leverage over Siniora and Hariri in terms of access to reconstruction money. He could also be following instructions from his Hizballah coreligionists, without whom he has little political vitality amongst Lebanese Shi'a, to play hardball in order to scuttle or gain concessions on the tribunal. Whichever the case, we will keep a close watch on Berri's position on the tribunal as the agreement evolves.

FELTMAN